LEGISLATION.

THE TRAVANCORE MAJORITY BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to move that the Travancore Majority Bill be taken up for consideration now. It was introduced at the last meeting of the Council and the House resolved that the Bill need not be referred to a Select Committee. Therefore, it stands for consideration by this House now.

MR. K. GEORGE (*Financial Secretary to Government*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No notice of any amendment has been received.

PRESIDENT: So I take it that the House accepts the Bill without any amendment.

The Bill was adjourned for being finally passed on a future date.

REVENUE RECOVERY REGULATION AMENDMENT BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The next item on the agenda is the Revenue Recovery Regulation Amendment Bill. This also was, with the permission of the House, introduced at the last meeting and the House resolved that it need not go before the Select Committee. I, therefore, beg to move that the Bill may be taken up for consideration now.

MR. R. KRISHNA PILLAI (*Chief Secretary to Government*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Here again there has been no notice of any amendment.

The Council accepted the Bill. The Bill was adjourned for being finally passed on a future date.

THE GOVERNMENT SECURITIES BILL.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sir, I beg to present the report of the Select Committee on the Government Securities Bill. I further move that the same be taken up for consideration.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): I second it.

Clauses 1 and 2 in respect of which no notice of amendment had been received were added to the Bill.

Clause 3.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to move certain amendments to clause 3. I propose to add the words "or except as provided specifically in the instrument itself" before the words "no notice" in line 1.

Clause 3, as it stands at present, is to the following effect:—

"Save as otherwise provided in or under this Regulation, no notice of any trust in respect of any Government security shall be receivable by Our Government.

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2. "Our Government shall not be deemed to have received notice of any trust by reason only of the fact that it has recognised an endorsement on a Government security by an executor or administrator as such, nor shall it inquire into the terms of any will by which such executor or administrator may be bound, but, on being satisfied of the due appointment of such executor or administrator, it shall be entitled to treat him as the full owner of any Government security belonging to the estate of the person whom he represents."

With respect to the previous history of the legislation upon the subject, it may be pointed out that the Government Securities Act in British India was an Act of the year 1881 which itself was amended in the year 1885 by a subsequent Act. Both these Acts were subsequently repealed by Act XIII of 1886 which in its turn was again repealed by Act X of 1920. That is the history of the legislation in British India on the subject.

In the matter of Government securities, Act XIII of 1886 was too rigid on the subject of trusts. Section 4 of that act may be referred to in this connection and that laid down that no notice of any trust would be taken by the Government with respect to any Government security. And it was found to work considerable hardship, with the result that in the existing statute on the subject, *i. e.*, the Act of 1920, modified recognition of trust was practically admitted and that has been adopted by my friend Mr. V. Subba Aiyar as clause 3 in the present Bill.

My submission is that the exceptions provided are not sufficient so far as the conditions in Travancore are concerned. Here, for example, the Government and the people generally will have to deal with a number of institutions which are entirely of the religious trust variety. For example, suppose there is a loan contracted by the Government of Travancore from a Devaswom. In such cases the amount is borrowed by the Government from a trust fund. To show that, in such circumstances, Government will not take notice of any trust at all would certainly be prejudicial to the institutions concerned. So, in addition to the exception that has been shown in the India Act, I would add the following also—that where the instrument itself provides or indicates that the dealing is in relation to a particular trust, certainly Government cannot say that they will not take notice of any trust.

It is only for that purpose that I have brought forward this amendment. Even in British India the rigidity with respect to the recognition of trusts in relation to Government security has been considerably relaxed. British Indian legislation has taken care in certain other instances also; that is to say with respect to Government securities in favour of Indian States, it is stated that they would not be subject to any provision in the said piece of legislation. They, therefore, made very clear exception with respect to certain Government securities in British India. I therefore, point out that, in view of the very great number of trusts in Travancore, the clause as it is at present may prove a serious hardship. I press that my amendment be accepted.

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MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I may first explain the section itself, because the amendment to my mind is based upon some misconception. What the section says is that no notice of any trust in respect of a Government security shall be receivable by Government. That is, the person mentioned in the document should be treated as the owner of the security. Even though he may be a trustee, even though the endorsement on the security may evidence a trust, Government ought to take no notice of it. In other words, what the clause proposes to do is that the Government shall not enter into any detailed enquiry as to whether any other person than the one named in the security is entitled to the money or whether there are beneficial owners behind the trustee mentioned in the document itself. What Mr. Narayana Pillai wants is that, if the designation of the person named evidences a trust, the Government ought to recognise that trust. I do not see the necessity for any amendment at all. If a security is issued in the name of A as a trustee of a particular Devaswom, it is A that is entitled to receive payment. If A ceases to be a trustee it is open to him to endorse the document to the new trustee; but if A will not so endorse, or is not prepared to recognise the new trustee, Government should not be required to take evidence and decide who the proper trustee is. It is open to the new trustee to go to a court to establish his right and get an injunction. If the amendment is accepted it will be throwing a very serious responsibility on the Government. The proper course is not to confer any right on the trustee. Rules will be framed. The authorities of the trust might request Government not to pay anything to the dismissed trustee. I do not think that any separate exemption is necessary for this. I do not, after all, think it to be a very difficult matter.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I wish to know whether Mr. Subba Aiyar has any particular objection to accept the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The question in such cases will be whether we should give importance to the name or to the designation. Matters of this kind are purely technical and have been discussed by very many experts. Let me read from the *British Indian Government Securities Manual* to show what obtains there.

"A common form of such irregular endorsements are those in which mention is made of a trust, *e. g.*: "Pay to A, Trustee for B," or "Pay to A, Guardian of B," or "Pay to Judge of A, on account of B's security," Government do not undertake any responsibility as regards such endorsements; if they did so, they would not be discharged of their liability, in respect of their original undertaking, by simply making the payment to A, for he may have ceased to be B's Trustee, and Government would be accepting an obligation which would lead to much trouble. It is for this reason that section 4 of the Indian Securities Act lays down that no notice of any trust, in respect of any Government security, shall be receivable by Government. Persons who endorse notes in such a way do so, therefore, at their own risk. The words, in such endorsements, indicating the trust,

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should be regarded by Treasury Officers as so much surplusage and whenever such a note is endorsed to or by A as a trustee, or in any similar capacity, he should be treated in all respects as the owner of the note in his personal capacity. Although, however, this is sufficient to discharge Government's responsibility it is desirable that Treasury Officers should advise A to get the note renewed in the name of the beneficiary, as a measure of self-protection against any liability which he might otherwise incur, in respect of his trusteeship, owing to his having dealt with the notes in his personal capacity."

It will be seen from the above that this Government will be undertaking a very serious responsibility by recognising such trusts. It is to avoid such difficulty that the clause is worded as it is.

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I wish to know whether the Government experince any difficulty in recognising the successors.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): No; not as heirs.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I wish to know whether the section will apply to bonds executed before the Regulation.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The section is not intended to be retrospective.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I was also a member of the Select Committee who sat upon this Bill. It appears to me that the section applies only to trusts created subsequent to the issue of the bond itself. Therefore the amendment proposed by my friend does not arise from the section because the object is gained by the section standing as it is.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In spite of the explanation, I press the amendment. The fact that the necessity in such cases as I pointed out is not likely to arise is no consolation. The section has no retrospective effect. But suppose hereafter a loan is to be floated and Government borrow from one of the Devaswoms here; Government according to this section, might refuse to take notice of that trust. Clause 3 says:

(1) Save as otherwise provided in or under this Regulation, no notice of any trust in respect of any Government security shall be receivable by our Government.

(2) Our Government shall not be deemed to have received notice of any trust by reason only of the fact that it has recognised an endorsement on a Government security by an executor or administrator as such, nor shall it inquire into the terms of any will by which such executor or administrator may be bound, but, on being satisfied of the due appointment of such executor or administrator, it shall be entitled to treat him as the full owner of any Government security belonging to the estate of the person whom he represents.

Suppose there is an *Ooralan* who lends money in the name of a Devaswom. He might be the holder of the bond. Suppose he is dismissed after some time; then who is to receive the money? That section says that the holder of the bond alone is entitled to payment. Government might say that they could undertake the responsibility of finding out the real claimant. The holder will be the only person entitled to receive payment

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PRESIDENT: The holder of the bond will be answerable for the money.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): He may be a pauper.

PRESIDENT: You may get an injunction against payment to him.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In the circumstances it will be a real hardship. Therefore I press the amendment.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have only a word to say. The question in such cases is, which should be given the preference, the name or the designation. According to the section the person named in the bond will be preferred. In case where the holder of the security is a pauper a remedy may be obtained from the civil courts where a suit may be filed and an injunction obtained.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*). Another person must know of the existence of a security bond.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Accounts are in the hands of the committee which manages the trust. They very well know that

MR. T. K. VELU PILLAI (*Trivandrum cum Nedumangad*): I wish to know from Mr.Subba Aiyar whether he is not aware of instances in which a trustee refuses to submit accounts after he loses his office.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): In such cases the Government cannot go into the question as to whether the trustee has been properly removed by a competent authority and whether the new one has been duly appointed. The aggrieved party should go to a civil court and obtain the necessary relief.

The amendment was put to the vote and lost, 6 voting *for* and 26 *against*.

Clause 3 was added to the Bill.

Clause 4.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to move the following :—

Clause 4. For sub-clause (2) substitute the following: "This Section shall not apply where such death has occurred before this Regulation comes into force."

Clause 4 reads thus :

(1) Notwithstanding any law to the contrary—

(a) When a Government security is payable to two or more persons jointly, and either or any of them dies, the security shall, *subject to such rules as may be prescribed*, be payable to the survivor or survivors of those persons, and

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(b) when a Government security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representative of the deceased, or to any of them.

(2) This section shall apply whether such death occurred or occurs before or after this Regulation comes into force.

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.

Here the clause has been expressly made retrospective. Before this particular Regulation has come into force, the death of any particular person who is a joint holder of Government security might have occurred. Certain rights get already vested in certain persons who are jointly entitled to the money due under the joint promise. In British India the matter is regulated by Section 45 of the Contract Act. In Travancore there is a reported case in 10 T. L. R. 198, page 200, which says that the survivor will be entitled to the amount due along with the heirs of the deceased. My friend may say that the British Indian Act has been made specifically retrospective. But there Government securities have been in existence for a very long time, say from 1881 onwards. But in Travancore we have Government securities for the first time. Under such circumstances I, may submit it would not be right on the part of the Government to ignore the vested rights of the parties concerned. I certainly understand that Government do not want to trouble themselves with enquiries as to the rights of the original holders. But having allowed certain rights to vest in particular individuals, I think this restrospective effect would cause serious hardship, if they are now divested of those rights. I therefore propose the amendment for acceptance by the House.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Here again I may at once explain to the House that the object of the clause is far from divesting any interest already vested in individuals. As I explained when I introduced the Bill the object of this Bill is to make the security easily marketable, and what I am trying to explain is that, in cases where one of the persons mentioned in the document is dead, the survivor shall be entitled to the money. That does not, to my mind, in the least interfere with the vested right of any particular individual. Nor does it reveal that the object is to divest any vested right. The person interested can have his right established by a court of law and he can ask the Government not to pay the money to any other than the person entitled to it. I think it is clear now that the object of the clause is not to divest any right vested in any person. I therefore beg to oppose the motion.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : May I ask Mr. Subba Aiyar whether the expression 'this section' in sub-clause (2) is intended to mean the sub-section or the whole section.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : Any way it makes no difference. We might take it that it means the whole section.

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RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*) : If it means the whole section it need not be put down as a separate sub-section.

PRESIDENT: It is enough if sub-section 3 is numbered as sub-section 2.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Mr. Subba Aiyar has given an assurance to this House that he did not think of divesting rights already vested. Perhaps he might not do so on account of his generosity. A court of law may not attach very great authority to the proceedings of this Council or the assurance given by the Government member in charge of this Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): By way of explanation I may say that no assurance of mine need be quoted in any court of law. Sub-section (3) of Section 4 reads as follows:

> Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): When I am talking on this section, Mr. Subba Aiyar could certainly have done me the justice to think that I have read the whole Bill. I do not think he is justified in thinking that I am ignorant of the provisions of the Bill. But the difficulty is this. While Mr. Subba Aiyar wants to rid the Government of any difficulty or responsibility, why should the subject be put to the necessity of a suit being filed, vakils being engaged and the matter being subjected to a judicial enquiry? Further, I think, Mr. Subba Aiyar was telling us that, in this particular Bill, there is no provision to prevent a party from getting redress in the civil courts. Ordinarily, Sir, that might have had no great significance. But when we remember that several of the Bills have been wrongly interpreted by the High Court in spite of the wording being very clear and unambiguous we are not in a position to give very great weight to the statements of Mr. Subba Aiyar that there is no such prohibition in the Bill and that the party is entitled to go to a court of law for redress. The explanation given by the Law Member is not quite convincing. I trust the Council will see that the object of this section is not to confer any right upon the people but it is an attempt on the part of the Government to protect itself. Sir, in justice to the country, I trust that the Law Member will take this aspect of the question into careful consideration and accept the amendment because the Government do not lose any thing by the acceptance of the amendment. The necessity of putting a party to the expense of a very protracted and ruinous litigation is a very serious matter to be considered. It is against the principle of legislation. We know so many instances in which courts of law overrule the legislature as was done in the case of the Nair Regulation. Section 26 of the Regulation in spite of its being very clear was wrongly interpreted and decided. I think it is dangerous to import into this Bill this drastic measure just for the purpose of enabling the Government to

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escape responsibility. It is for the Government to accept the full responsibility and save the parties from seeking redress in courts of law.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): I wish to say a word in support of the amendment. Even at the Select Committee this section gave rise to a great deal of discussion and good deal of trouble. We were not all for this drastic provision. Therefore the amendment was made in the old section itself. Section 4 reads as follows :—

(1) Notwithstanding any law to the contrary

(*a*) when a Government security is payable to two or more persons jointly, and either or any of them dies, the security shall, subject to such rules as may be prescribed, be payable to the survivor or survivors of those persons, and

(*b*) when a Government security is payable to two or more persons severally and either or any of them dies, the security shall be payable to the survivor or survivors of those persons, or to the representative of the deceased, or to any of them.

(2) This section shall apply whether such death occurred or occurs before or after this Regulation comes into force.

(3) Nothing herein contained shall affect any claim which any representative of a deceased person may have against the survivor or survivors under or in respect of any security to which sub-section (1) applies.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): By way of explanation and with a view to cut short discussion, I may say that there is no intention at all to divest or in any way affect any vested right. If my friends think that the clause as it stands may work hardship, I have no objection to omit the clause. But I cannot accept the amendment as it is. Unless specifically mentioned in the Regulation, no provision will have any retrospective effect. It is therefore enough if sub-clause (2) of clause 4 is omitted. I therefore beg to move that sub-section (2) of clause 4 be omitted.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I withdraw my amendment and second Mr. Subba Aiyar's amendment.

Mr. Subba Aiyar's amendment was accepted by the House and sub-section (2) of clause 4 was omitted.

Clause 4 as amended was added to the Bill.

Clauses 5, 6, 7, 8 and 9 were added to the Bill.

Clause 10.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to move :

Clause 10. Add after "Mitakshara law" in line 8, the words "or of an undivided family governed by the marumakkathayam law or managed on lines similar to marumakkathayam law or in the case of Malabar Brahmins."

Now clause 10 as amended reads thus :

"Subject to the provisions of Section 11, a person claiming to be entitled to a Government promissory note may on applying to the prescribed officer, and on satisfying him of the justice of his claim and delivering the promissory note receipted in the prescribed manner, and paying the prescribed fee, if any, obtain from such officer a renewed promissory note payable to him.

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Provided that, when application is made for the renewal of a Government promissory note which appears to the prescribed officer to stand in the name of a deceased member of a Hindu undivided family governed by the Mitakshara law or of an undivided family governed by the marumakkathayam law or managed on lines similar to marumakkathayam law, as in the case of Malabar Brahmins, a renewed promissory note shall not be issued to the applicant unless he furnishes a certificate signed by such authority and after such enquiry as may be prescribed to the effect that the deceased belonged to a Hindu undivided family governed by the Mitakshara law, that the promissory note formed part of the joint property of the family, and that the applicant is the managing or sole surviving male member of the family."

This section, like the others, has been fully reflected from the corresponding section of the British Indian Act passed by the Imperial Legislature.

In British India there is a preponderance of Mitakshara families and therefore the section refers to the Mitakshara family. There are only a few Malabar families there and so the Malabar families have been included in the explanation. But here the circumstances are different. The explanation of the section is as follows:

"The expression Hindu undivided family governed by the Mitakshara law shall for the purposes of this section be deemed to include a Malabar *tarwad*".

First of all what is exactly meant by a Malabar *tarwad* is not clear. Of course in British India it will not lead to any difficulty, because Malabar there refers to British Malabar. But Malabar *tarwad* need not necessarily mean the Travancore *tarwad*. That is one objection.

Secondly, Malabar *tarwad* is said to be included in the expression Hindu Mitakshara family. Now there are *tarwads* among Mahomedans in certain parts of Travancore, for example Edava, where Mahomedans follow the *marumakkathaya* system. They also have the joint family system. Then again there is the case of Nambudiris who have Malabar *tarwad* with *makathayam* inheritance. Whether these are included in the expression Malabar *tarwad* is not quite clear. In British India there is no such difficulty. Since there is a preponderance of a Hindu Mitakshara family, the clause occurs as it is in the British Indian Act. I therefore propose that the section might be amended as follows:

Subject to the provisions of Section 11, a person claiming to be entitled to a Government promissory note may, on applying to the prescribed officer, and on satisfying him of the justice of his claim and delivering the promissory note receipted in the prescribed manner, and paying the prescribed fee, if any, obtain from such officer a renewed promissory note payable to him.

Provided that when application is made for the renewal of a Government promissory note which appears to the prescribed officer to stand in the name of a deceased member of a Hindu undivided family governed by the *marumakkathayam* law or managed on lines similar to *marumakkathayam* law as in the case of Malabar Brahmins, a renewed promissory note shall not be issued to the applicant unless he furnished a certificate signed by such authority and after such enquiry as may be prescribed to the effect that the deceased belonged to a Hindu undivided family governed by the Mitakshara law, that the promissory note formed part of the joint property of the family, and that the applicant is the managing or sole surviving male member of the family.

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[Mr. V. Subba Aiyar.]

The explanation may be done away with, if my amendment is accepted. That is the object with which the amendment has been brought forward. It will avoid all manner of ambiguity. It will include all manner of corporate families existing in Travancore.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The amendment seems to be based on sentimental grounds. I do not think that as a matter of fact there is much to be said in favour of the amendment. It was said that in the case of British India we could understand the expression Malabar *tarwad* and that in the case of Travancore it is not possible to understand it. I am inclined to join issue with my friend on that point. Ordinarily the expression 'Malabar *tarwad*' is understood to mean an undivided family governed by Malabar law. I will refer my friend to the Travancore Law Reports and the digests thereto. The explanation is quite intelligible. If the section is amended, as suggested, it will not read well and it will become very cumbrous. I do not think there is any difficulty in understanding the section as it is.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Does it include an Ezhava *tarwad* also, whatever be the system of inheritence ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Certainly. I suppose Ezhavas are also Hindus.

I do not think there is any difficulty in the section. So far as the amendment itself is concerned, I rather think that it is cumbrous. I do not think it will be good drafting. If, however, the amendment is pressed by my friend I would put it as follows:—

"Hindu undivided family governed by the *marumakkathayam* law or managed on lines similar to *marumakkathayam* law as in the case of Malabar Brahmins ".

The expression Hindu undivided family for the purpose of this section includes every *tarwad* or family governed by the Malabar law of inheritance.

PRESIDENT: Does it imply undivided family also ?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Yes.

PRESIDENT: Why not you say: "Malabar *tarwad* of all descriptions."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think that is necessary because my amendment comprehends all undivided families in Travancore.

MR. C. SANKARA MENON (*Quilon*): I think it is better that the expression 'Malabar *tarwad*' is clearly defined.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think there is any necessity to do it.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I do not think it will include *illams*. Therefore, it is better to say "families governed by *Marumakkatayam* law or Malabar law of inheritance."

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): "Undivided families governed by the Malabar law of inheritance." I suppose that will do.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): May I point out that there are two classes of Malabar law?

PRESIDENT: The amendment is sufficiently comprehensive.

MR. T. K. VELU PILLAI (*Trivandrum* cum *Nedumangad*): Will Mr. Subba Aiyar omit the last portion of his amendment "of inheritance".

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I have no objection. I think the expression "undivided families governed by Malabar law" is sufficiently comprehensive and will satisfy Mr. P. K. Narayana Pillai.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I have no objection to withdraw my amendment and accept Mr. Subba Aiyar's amendment, *viz.*, that the words 'undivided families governed by Malabar law' be substituted for 'malabar *tarwad*' in line 2 of the explanation to Clause 10.

The amendment was accepted by the House.

Clause 10 as amended was added to the Bill.

Clause 11

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Sir, I beg to move that 'six months' be substituted for 'three months' in sub-clause 1 (*c*) of clause 11.

The section says that before the expiry of a period of three months from the date of declaration notice should be issued to the officer that proceedings have been instituted in a court of law. According to section 409 of the Civil Procedure Code a period of 3 months is the irreducible minimum for a notice to be served upon the officer or Government before a suit is filed. Within the same period according to this section the party has to give notice to the officer concerned that a suit has been instituted in a court of law. I do not think that the same period will enable him to do so. I would, therefore, suggest that 6 months be substituted in the place of 3 months. That is the object with which I have brought forward the amendment.

MR. N. RAMAKRISHNA PILLAI (*Vaikam* cum *Ettumanur*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I may say that it was fixed at three months because the Limitation Regulation Amendment Bill that is now before the House exempts the period of notice. I fear the Limitation Bill will take some time to become law.

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[Mr. P. K. Narayana Pillai.]

I think six months will be too long a time. Anyhow, I have no objection to accept the amendment.

The amendment was accepted by the House.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I beg to move that in line 3, of sub-clause 2, for the words "a copy thereof" the words "records of such enquiry," be substituted.

Original documents such as the statement of witnesses recorded by an officer may be sent to the officer who has to form an opinion in the matter. Whatever be the wisdom underlying the parallel section in British India, I think we may make a departure.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*) : I accept the amendment.

The amendment was carried.

Clause 11, as amended, was added to the Bill.

Clauses 12, 13 and 14 were added to the Bill.

Clause 15

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : I beg to move the following amendment to clause 15 :

"*Provided that in the case of a Government security renewed under Section 11 or Section 16, nothing in this Regulation shall be deemed to bar a claim against the Government in respect of such security by any person who had no notice of the proceedings under those sections, or who derives title through any such person.*"

Section 11 provides that an officer authorised by Government may adjudicate with respect to the claims of persons who apply for the renewal of any Government security. Now if that officer decides in favour of any particular party it is certainly open to Government to adopt a particular course under the Regulation. Under the British Indian Act we have a parallel section which says that no person shall be prejudiced by any proceedings of which he had no notice. Somehow Mr. Subba Aiyar thought fit to omit that provision while he has followed the British Indian Act in all other provisions very closely. My contention is that, in the absence of any notice, no person should be prejudiced by the orders passed by the authorised officer. The renewal of a Government Security is likely to be passed under two sections of the present Regulation—sections 11 and 16.

I submit that in both of these sections it is obligatory that there should be notice. My submission is that in the absence of any such notice it should not be held to prejudice any party who had no notice. If my friend wants me to refer to the parallel section I may point out the section in the British Indian Act. Clause 2 of Section 17 of the Indian Act may be referred to.

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That is with respect to section 11 of our Bill. The British Indian section is very clear in the matter. So far as section 11 of our Bill is concerned, notice seems to be absolutely necessary.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): I second it.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I beg to point out that section 17 of the Indian Act does not find a place in the Regulation. It deals with a particular class of bonds, *viz.*, securities which are payable to bearer. Such bonds are not intended to be issued here and therefore no such provision is made in our Regulation. What clause 15 says is that, if the things mentioned in the section have been done, Government shall be discharged of all liability at the expiry of six years. In other words what the section proposes to do is to prescribe a period of limitation for discharging Government from all liability. Now in the case of evey renewal or other transactions mentioned in the section certainly the prescribed rule will have to be followed. In the case of transactions not relating to immovable property, the period fixed in the Limitation Regulation is ordinarily six years. I do not think why we should import the question of notice to the party in this section. I am inclined to think that this section, as it is, is perfectly clear and reasonable and will not incovenience anybody. There is greater security also. Government may decide in favour of a particular person. The person in whose favour the decision is made should have some security of title at least after six years. I believe six years is ample time for safeguarding anybody's rights. The question of notice therefore does not arise. I find it difficult to accept the amendment. I therefore oppose it.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I do not quite understand my friend Mr. Narayana Pillai when he objects to the section which says that, after the expiry of a certain period, Government will be discharged of their liabilities. With reference to parties the only question which can be raised is whether the period mentioned is reasonable. As for that, the time fixed is the ordinary period fixed in the statutary limitation and I do not think that period is insufficient. As for the general right of any individual filing suits there is the Civil Procedure Code which can be taken advantage of by the party entitled. I do not think the section, as it is, is likely to cause any serious hardship.

RAO BAHADUR K. A. KRISHNA AIYANGAR (*Nominated*) (*Deputy President*): I also oppose the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I am sorry my friend has not understood me correctly. My contention is that the Law Member seems not to have followed the second clause of section 17 in the British Indian Act on the subject.

It runs as follows:

"Provided that in the case of a Government promissory note renewed under section 13, nothing in this section shall be deemed to bar a claim against the Government in respect of such note by any person who had no notice of the proceedings under that section, or who derives title through any such person."

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[Mr. V. Subba Aiyar.]

My friend says that the Government are discharging their liability only after six years. That is irrelevant. Anybody who has a right might exercise it before the expiry of that period. Suppose, before the expiry of that period one of the joint owners gets the bond renewed by the officer invested with the power without notice being served on the rival claimant. What is to be done under such circumstances? The period of limitation can be calculated only from the date of the knowledge of the party entitled. If it is after four years the party will have only two years before him. To keep up the liability of Government the British Government has provided a safeguard in the matter. I do not see why the Government of Travancore alone should be entitled to a different position as to disclaim all liability after such period. My friend Mr. Subba Aiyar says that he opposes the amendment because there is provision in the section for renewal of the bond. That is strange.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The renewal should be made in accordance with the provision in this Regulation.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): There is absolutely no reference to any notice in Section 11.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*):

Section 11. (1) Where there is a dispute as to the title to a Government promissory note in respect of which an application for renewal has been made, the prescribed officer may—

(*a*) where any party to the dispute has obtained a final decision from a court of competent jurisdiction declaring him to be entitled to such note, issue a renewed note in favour of such party, or

(*b*) refuse to renew the note until such a decision has been obtained, or

(*c*) after such inquiry as is hereinafter provided and consideration of the result thereof, declare by order in writing which of the parties is in his opinion entitled to such note and may, after the expiration of three months from the date of such declaration, issue a renewed note in favour of such party in accordance with the provision of section 10, unless within that period he has received notice that proceedings have been instituted by any person in a court of competent jurisdiction for the purpose of establishing a title to such note.

Explanation.—For the purpose of this sub-section, the expression 'final decision' means a decision which is not appealable or a decision which is appealable but against which no appeal has been filed within the period of limitation allowed by law.

(2) For the purpose of the inquiry referred to in sub-section (1), the prescribed officer may himself record, or may request the District Magistrate to record or to have recorded, the whole or any part of such evidence as the parties may produce. When such request has been made to the District Magistrate, such Magistrate may himself record or may direct any Magistrate of the First Class, subordinate to him, to record the evidence, and shall forward a copy thereof to the prescribed officer.

Explanation. For the purposes of this sub-section, 'the District Magistrate' means the District Magistrate having jurisdiction in the place where interest on the promissory note is payable.

(3) The prescribed officer or any Magistrate acting under this Section may, if he thinks fit, record evidence on oath.

It refers to section 10 and rules will be prescribed in the matter.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): Government certainly take the power to enact rules. But this clause takes away the fundamental right of the subject to have notice of proceedings.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I fail to see what the fundamental right that has been taken away is. Otherwise I could have accepted the amendment.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): While the British Government does not want to be so despotic, here is Mr. Subba Aiyar who wants to be more arbitrary than the British Government, to the detriment of the rights of the subjects of His Highness the Maha Raja.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I do not think there is any serious hardship in the section. Section 17 of the Act applies to securities payable to bearer and the Government are discharged from all liability immediately. This has not been adopted here, and clause 15 in the Bill discharges Government from liability only after six years. I think the ordinary period of limitation in all civil suits has been provided for in this case also. No question of notice arises in such cases.

The amendment was put to the vote and lost, 7 voting *for* and 18 *against*.

Clause 15 was added to the Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Amendments 8 and 9 are only printer's mistakes. Therefore I have no objection to accept those amendments.

Clauses 16, 17, 18 and 19 were added to the Bill without the printer's mistakes.

Clause 20.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): I beg to move the amendment to clause 20.

Add as sub-clause (3) the following: "For the purposes of this section, a statement made to any officer taking evidence in an enquiry under Section 11 shall be deemed to be made to the authority empowered to pronounce the decision in the said enquiry."

With respect to the clause in question there is a difficulty. Statements may be recorded by the immediate authority named by Government and also by the District Magistrate or any other officer empowered by him.

It may so happen that an officer who is entitled to sanction may not be the same as the officer to whom complaint is preferred. I would submit that it is better to have it distinctly stated that the authority contemplated under the section is the authority entitled to decide in the enquiry in question. It is with this object that I have brought forward the amendment.

MR. J. JOHN NIDIRY (*Changanachery cum Minachil*): I second it.

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[Mr. S. Parameswara Aiyar.]

PRESIDENT: Evidently you want, Mr. Narayana Pillai, that the deciding authority should be the authority that records the evidence also.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): No. I would refer the Law Member to section 11.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): Sub-section 2 says:

"No court shall take cognizance of any offence under sub-section (1) save on the complaint of the authority to whom the false statement was made."

PRESIDENT: He wants one and the same authority for recording statements and for adjudication.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The amendment is for sub-section 2.

PRESIDENT: You may make the amendment as you like.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): The object of the amendment is that the person who simply records evidence should not be allowed to give sanction to prosecute.

PRESIDENT: Then why not amend the section itself?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I would put it as follows:

Sub-section 2 authority competent to decide the matter.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): The expression used in section 11 is a "prescribed officer." "Prescribed officer is the *deciding* officer. So you may use the word 'officer' instead of authority.

PRESIDENT: What is meant by the word "prescribed"?

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): The word "prescribed" has been defined.

I beg to move that the words "of the prescribed officer" be substituted for "of the authority to whom the full statement was made."

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): That is quite right.

The amendment was accepted.

Clause 20, as amended, was added to the Bill.

Clause 21.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): With respect to the last amendment, clause 21, "in line 2 of sub-clause (3) substitute the word "if" for the word "is"" there is no such error in my copy.

MR. S. PARAMESVARA AIYAR (*Secretary to Government*): The mistake occurs only in the published copy of the Bill in the *Gazette*.

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MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): It is enough if the correction is noted.

Clause 21, as corrected, was added to the Bill.

MR. V. SUBBA AIYAR (*Additional Head Sirkar Vakil*): I move that the Bill be finally read on a future occasion.

MR. K. PARAMESVARAN PILLAI (*Tiruvalla*): May I know the final form of the amendment to clause 10?

The clause as amended was read.

MR. K. GEORGE (*Financial Secretary to Government*): I second Mr. Subba Aiyar's motion.

The Council adjourned at 5-55 P. M. to meet again at 11-30 A. M. the next day.

S. PARAMESVARA AIYAR,
Secretary to the Legislative Council.

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